

## **Assembly Bill No. 1767**

### **CHAPTER 451**

An act to add Section 2316 to the Business and Professions Code, and to amend Section 128335 of the Health and Safety Code, relating to healing arts.

[Approved by Governor September 29, 2010. Filed with  
Secretary of State September 29, 2010.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 1767, Hill. Healing arts.

Existing law requires a board under the Business and Professions Code, including the Medical Board of California, to provide legal representation to any person hired or under contract who provides expertise to the board in the evaluation of an applicant or the conduct of a licensee when that person is named as a defendant in a civil action arising out of the evaluation or any opinions rendered, statements made, or testimony given to the board. Existing law also provides immunity from civil liability to any person providing testimony to the Medical Board of California, the California Board of Podiatric Medicine, or the Department of Justice indicating that a licensee may be guilty of unprofessional conduct or may be impaired because of drug or alcohol abuse or mental illness.

This bill would require the Office of the Attorney General, with approval by the Medical Board of California, to provide representation to any licensed physician and surgeon who provides expertise to the board in the evaluation of the conduct of an applicant or a licensee when, as a result of providing that expertise, the physician and surgeon is subject to a disciplinary proceeding undertaken by a specialty board of which the physician and surgeon is a member.

Existing law requires the Office of Statewide Health Planning and Development to establish a nonprofit public benefit corporation known as the Health Professions Education Foundation to perform various duties with respect to implementing health professions scholarship and loan programs. Under existing law, the foundation is governed by 13 members, including, until January 1, 2011, 2 members of the Medical Board of California appointed by the board.

This bill would extend the 2 foundation board appointments to January 1, 2016.

*The people of the State of California do enact as follows:*

SECTION 1. (a) The Legislature finds and declares that consumer protection is further strengthened when the Medical Board of California uses board-certified physicians and surgeons in the investigation of complaints and the prosecution of administrative disciplinary actions. The Legislature further finds and declares that the use of board-certified physicians and surgeons is consistent with the requirements of Section 2220.08 of the Business and Professions Code, and in conformity with existing case law that requires that the standard of care and any deviations from the standard of care be established by expert witnesses.

(b) The Legislature finds and declares that a disturbing trend may be emerging whereby board-certified physicians and surgeons may be subject to discipline from the very boards that certified them as expert witnesses for the Medical Board of California in administrative proceedings. Actual or threatened discipline against board-certified physicians and surgeons may chill participation in the board's expert reviewer program and may significantly impair and hamper the effective and timely resolution of complaints and licensure and disciplinary actions. The Legislature finds and declares that the enactment of legislation is necessary to prevent this occurrence and for the protection of California consumers.

SEC. 2. Section 2316 is added to the Business and Professions Code, to read:

2316. If a licensed physician and surgeon who provides expertise to the board in the evaluation of an applicant or a licensee is, as a result of providing that expertise, the subject of a disciplinary proceeding undertaken by a specialty board of which the physician and surgeon is a member, with board approval, the Office of the Attorney General shall represent the physician and surgeon in that disciplinary proceeding regarding any allegation brought against the physician and surgeon as a direct result of providing that expertise to the board.

SEC. 3. Section 128335 of the Health and Safety Code, as amended by Section 3 of Chapter 317 of the Statutes of 2005, is amended to read:

128335. (a) The office shall establish a nonprofit public benefit corporation, to be known as the Health Professions Education Foundation, that shall be governed by a board consisting of a total of 13 members, nine members appointed by the Governor, one member appointed by the Speaker of the Assembly, one member appointed by the Senate Committee on Rules, and two members of the Medical Board of California appointed by the Medical Board of California. The members of the foundation board appointed by the Governor, Speaker of the Assembly, and Senate Committee on Rules may include representatives of minority groups that are underrepresented in the health professions, persons employed as health professionals, and other appropriate members of health or related professions. All persons considered for appointment shall have an interest in health programs, an interest in health educational opportunities for underrepresented groups, and the ability and desire to solicit funds for the purposes of this article as

determined by the appointing power. The chairperson of the commission shall also be a nonvoting, ex officio member of the board.

(b) The Governor shall appoint the president of the board of trustees from among those members appointed by the Governor, the Speaker of the Assembly, the Senate Committee on Rules, and the Medical Board of California.

(c) The director, after consultation with the president of the board, may appoint a council of advisers comprised of up to nine members. The council shall advise the director and the board on technical matters and programmatic issues related to the Health Professions Education Foundation Program.

(d) Members of the board and members of the council shall serve without compensation but shall be reimbursed for any actual and necessary expenses incurred in connection with their duties as members of the board or the council. Members appointed by the Medical Board of California shall serve without compensation, but shall be reimbursed by the Medical Board of California for any actual and necessary expenses incurred in connection with their duties as members of the foundation board.

(e) Notwithstanding any provision of law relating to incompatible activities, no member of the foundation board shall be considered to be engaged in activities inconsistent and incompatible with his or her duties solely as a result of membership on the Medical Board of California.

(f) The foundation shall be subject to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 2 of the Corporations Code), except that if there is a conflict with this article and the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 2 of the Corporations Code), this article shall prevail.

(g) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 4. Section 128335 of the Health and Safety Code, as added by Chapter 317 of the Statutes of 2005, is amended to read:

128335. (a) The office shall establish a nonprofit public benefit corporation, to be known as the Health Professions Education Foundation, that shall be governed by a board consisting of nine members appointed by the Governor, one member appointed by the Speaker of the Assembly, and one member appointed by the Senate Committee on Rules. The members of the foundation board appointed by the Governor, Speaker of the Assembly, and Senate Committee on Rules may include representatives of minority groups which are underrepresented in the health professions, persons employed as health professionals, and other appropriate members of health or related professions. All persons considered for appointment shall have an interest in health programs, an interest in health educational opportunities for underrepresented groups, and the ability and desire to solicit funds for the purposes of this article as determined by the appointing power. The chairperson of the commission shall also be a nonvoting, ex officio member of the board.

(b) The Governor shall appoint the president of the board of trustees from among those members appointed by the Governor, the Speaker of the Assembly, and the Senate Committee on Rules.

(c) The director, after consultation with the president of the board, may appoint a council of advisers comprised of up to nine members. The council shall advise the director and the board on technical matters and programmatic issues related to the Health Professions Education Foundation Program.

(d) Members of the board and members of the council shall serve without compensation but shall be reimbursed for any actual and necessary expenses incurred in connection with their duties as members of the board or the council.

(e) The foundation shall be subject to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 2 of the Corporations Code), except that if there is a conflict with this article and the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 2 of the Corporations Code), this article shall prevail.

(f) This section shall become operative January 1, 2016.